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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 178

RIN 3206-AH89

Procedures for Settling Claims

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final rules of procedure for the settlement of claims submitted to OPM for Federal civilian employees' compensation and leave, for proceeds of canceled checks for veterans' benefits payable to deceased beneficiaries, and for the settlement of deceased employees' compensation. Before June 30, 1996, these claims were settled by the United States General Accounting Office (GAO). However, on that date, pursuant to the Legislative Branch Appropriations Act of 1996, the authority to settle these claims transferred to the Director, Office of Management and Budget, who delegated this function to the Office of Personnel Management.

EFFECTIVE DATE: January 30, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Britner, Senior Attorney, (202) 606-2233, Claims Adjudication Unit, Office of the General Counsel, Room 7537, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the Legislative Branch Appropriations Act of 1996, most of the claims settlement functions performed by the General Accounting Office were transferred to the Director, Office of Management and Budget. See Sec. 211, Pub. L. 104-53, 109 Stat. 535. Subsequently, the Acting Director

delegated these functions to various components within the Executive branch in a determination order dated June 28, 1996. In summary, this order delegated to the Office of Personnel Management the authority to settle claims against the United States involving Federal employees' compensation and leave, deceased employees' compensation, and proceeds of canceled checks for veterans' benefits payable to deceased beneficiaries. Subsequently, Congress codified these changes through additional legislation. See Pub.L. 104-316, 110 Stat. 3826. The proposed rules were published in the **Federal Register** on August 25, 1997. The deadline for receiving comments has passed and no comments regarding the proposed rules have been received. The final procedures contain no changes from the proposed procedures and are substantially similar to the procedures formerly used by GAO, which are found at 4 CFR parts 31, 32 and 33.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would only apply to Federal agencies and employees.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (42 U.S.C. 3501-3530), and assigned OMB control number 3206-0232. *An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.*

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 178

Administrative practice and procedure, Claims, Compensation, Government employees.

U.S. Office of Personnel Management.

Janice R. Lachance,
Director.

Accordingly, OPM is amending 5 CFR by adding part 178 as follows:

PART 178—PROCEDURES FOR SETTLING CLAIMS

Subpart A—Administrative Claims— Compensation and Leave, Deceased Employees' Accounts and Proceeds of Canceled Checks for Veterans' Benefits Payable to Deceased Beneficiaries

Sec.

- 178.101 Scope of subpart.
- 178.102 Procedures for submitting claims.
- 678.103 Claim filed by a claimant's representative.
- 178.104 Statutory limitations on claims.
- 178.105 Basis of claim settlements.
- 178.106 Form of claim settlements.
- 178.107 Finality of claim settlements.

Subpart B—Settlement of Accounts for Deceased Civilian Officers and Employees

- 178.201 Scope of subpart.
- 178.202 Definitions.
- 178.203 Designation of beneficiary.
- 178.204 Order of payment precedence.
- 178.205 Procedures upon death of employee.
- 178.206 Return of unnegotiated Government checks.
- 178.207 Claims settlement jurisdiction.
- 178.208 Applicability of general procedures.

Subpart A—Administrative Claims— Compensation and Leave, Deceased Employees' Accounts and Proceeds of Canceled Checks for Veterans' Benefits Payable to Deceased Beneficiaries

Authority: 31 U.S.C. 3702; 5 U.S.C. 5583; 38 U.S.C. 5122; Pub. L. No. 104-53, 211, Nov. 19, 1995; E.O. 12107.

§ 178.101 Scope of subpart.

(a) *Claims covered.* This subpart prescribes general procedures applicable to claims against the United States that may be settled by the Director of the Office of Personnel Management pursuant to 31 U.S.C. 3702, 5 U.S.C. 5583 and 38 U.S.C. 5122. In general, these claims involve Federal employees' compensation and leave and claims for proceeds of canceled checks for veterans' benefits payable to deceased beneficiaries.

(b) *Claims not covered.* This subpart does not apply to claims that are under the exclusive jurisdiction of administrative agencies pursuant to specific statutory authority or claims concerning matters that are subject to negotiated grievance procedures under collective bargaining agreements entered into pursuant to 5 U.S.C. 7121(a). Also, these procedures do not

apply to claims under the Fair Labor Standards Act (FLSA). Procedures for FLSA claims are set out in part 551 of this chapter.

§ 178.102 Procedures for submitting claims.

(a) *Content of claims.* Except as provided in paragraph (b) of this section, a claim shall be submitted by the claimant in writing and must be signed by the claimant or by the claimant's representative. While no specific form is required, the request should describe the basis for the claim and state the amount sought. The claim should also include:

(1) The name, address, telephone number and facsimile machine number, if available, of the claimant;

(2) The name, address, telephone number and facsimile machine number, if available, of the agency employee who denied the claim;

(3) A copy of the denial of the claim; and,

(4) Any other information which the claimant believes OPM should consider.

(b) *Agency submissions of claims.* At the discretion of the agency, the agency may forward the claim to OPM on the claimant's behalf. The claimant is responsible for ensuring that OPM receives all the information requested in paragraph (a) of this section.

(c) *Administrative report.* At OPM's discretion, OPM may request the agency to provide an administrative report. This report should include:

(1) The agency's factual findings;

(2) The agency's conclusions of law with relevant citations;

(3) The agency's recommendation for disposition of the claim;

(4) A complete copy of any regulation, instruction, memorandum, or policy relied upon by the agency in making its determination;

(5) A statement that the claimant is or is not a member of a collective bargaining unit, and if so, a statement that the claim is or is not covered by a negotiated grievance procedure that specifically excludes the claim from coverage; and

(6) Any other information that the agency believes OPM should consider.

(d) *Canceled checks for veterans' benefits.* Claims for the proceeds of canceled checks for veterans' benefits payable to deceased beneficiaries must be accompanied by evidence that the claimant is the duly appointed representative of the decedent's estate and that the estate will not escheat.

(e) *Where to submit claims.* (1) All claims under this section should be sent to the Claims Adjudication Unit, Room 7535, Office of the General Counsel,

Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

Telephone inquiries regarding these claims may be made to (202) 606-2233.

(2) FLSA claims should be sent to the appropriate OPM Oversight Division as provided in part 551 of this chapter.

§ 178.103 Claim filed by a claimant's representative.

A claim filed by a claimant's representative must be supported by a duly executed power of attorney or other documentary evidence of the representative's right to act for the claimant.

§ 178.104 Statutory limitations on claims.

(a) *Statutory limitations relating to claims generally.* Except as provided in paragraphs (b) and (c) of this section or as otherwise provided by law, all claims against the United States Government are subject to the 6-year statute of limitations contained in 31 U.S.C. 3702(b). To satisfy the statutory limitation, a claim must be received by the Office of Personnel Management, or by the department or agency out of whose activities the claim arose, within 6 years from the date the claim accrued.

The claimant is responsible for proving that the claim was filed within the applicable statute of limitations.

(b) *Claims under the Fair Labor Standards Act.* Claims arising under the FLSA, 29 U.S.C. 207, *et seq.*, must be received by the Office of Personnel Management, or by the department or agency out of whose activity the claim arose, within the time limitations specified in the FLSA.

(c) *Other statutory limitations.* Statutes of limitation other than that identified in paragraph (a) of this section may apply to certain claims. Claimants are responsible for informing themselves regarding other possible statutory limitations.

§ 178.105 Basis of claim settlements.

The burden is upon the claimant to establish the timeliness of the claim, the liability of the United States, and the claimant's right to payment. The settlement of claims is based upon the written record only, which will include the submissions by the claimant and the agency. OPM will accept the facts asserted by the agency, absent clear and convincing evidence to the contrary.

§ 178.106 Form of claim settlements.

OPM will send a settlement to the claimant advising whether the claim may be allowed in whole or in part. If OPM requested an agency report or if the agency forwarded the claim on behalf of the claimant, OPM also will

send the agency a copy of the settlement.

§ 178.107 Finality of claim settlements.

(a) The OPM settlement is final; no further administrative review is available within OPM.

(b) Nothing in this subpart limits the right of a claimant to bring an action in an appropriate United States court.

Subpart B—Settlement of Accounts for Deceased Civilian Officers and Employees

Authority: 5 U.S.C. 5581, 5582, 5583.

§ 178.201 Scope of subpart.

(a) *Accounts covered.* This subpart prescribes forms and procedures for the prompt settlement of accounts of deceased civilian officers and employees of the Federal Government and of the government of the District of Columbia (including wholly owned and mixed-ownership Government corporations), as stated in 5 U.S.C. 5581, 5582, 5583.

(b) *Accounts not covered.* This subpart does not apply to accounts of deceased officers and employees of the Federal land banks, Federal intermediate credit banks, or regional banks for cooperatives (see 5 U.S.C. 5581(1)). Also, these procedures do not apply to payment of unpaid balance of salary or other sums due deceased Senators or Members of the House of Representatives or their officers or employees (see 2 U.S.C. 36a, 38a).

§ 178.202 Definitions.

(a) The term *deceased employees* as used in this part includes former civilian officers and employees who die subsequent to separation from the employing agency.

(b) The term *money due* means the pay, salary, or allowances due on account of the services of the decedent for the Federal Government or the government of the District of Columbia. It includes, but is not limited to:

(1) All per diem instead of subsistence, mileage, and amounts due in reimbursement of travel expenses, including incidental and miscellaneous expenses which are incurred in connection with the travel and for which reimbursement is due;

(2) All allowances upon change of official station;

(3) All quarters and cost-of-living allowances and overtime or premium pay;

(4) Amounts due for payment of cash awards for employees' suggestions;

(5) Amounts due as refund of salary deductions for United States Savings bonds;

(6) Payment for all accumulated and current accrued annual or vacation leave equal to the pay the decedent would have received had he or she lived and remained in the service until the expiration of the period of such annual or vacation leave;

(7) The amounts of all checks drawn in payment of such compensation which were not delivered by the Government to the officer or employee during his or her lifetime or of any unnegotiated checks returned to the Government because of the death of the officer or employee; and

(8) Retroactive pay under 5 U.S.C. 5344(b)(2).

§ 178.203 Designation of beneficiary.

(a) *Agency notification.* The employing agency shall notify each employee of his or her right to designate a beneficiary or beneficiaries to receive money due, and of the disposition of money due if a beneficiary is not designated. An employee may change or revoke a designation at any time under regulations promulgated by the Director of the Office of Personnel Management or his or her designee.

(b) *Designation Form.* Standard Form 1152, Designation of Beneficiary, Unpaid Compensation of Deceased Civilian Employee, is prescribed for use by employees in designating a beneficiary and in changing or revoking a previous designation; each agency will furnish the employee a Standard Form 1152 upon request. In the absence of the prescribed form, however, any designation, change, or cancellation of beneficiary witnessed and filed in accordance with the general requirements of this part will be acceptable.

(c) *Who may be designated.* An employee may designate any person or persons as beneficiary. The term *person* or *persons* as used in this part includes a legal entity or the estate of the deceased employee.

(d) *Executing and filing a designation of beneficiary form.* The Standard Form 1152 must be executed in duplicate by the employee and filed with the employing agency where the proper officer will sign it and insert the date of receipt in the space provided on each part, file the original, and return the duplicate to the employee. When a designation of beneficiary is changed or revoked, the employing agency should return the earlier designation to the employee, keeping a copy of only the current designation on file.

(e) *Effective period of a designation.* A properly executed and filed designation of beneficiary will be effective as long as employment by the same agency

continues. If an employee resigns and is reemployed, or is transferred to another agency, the employee must execute another designation of beneficiary form in accordance with paragraph (d) of this section. A new designation of beneficiary is not required, however, when an employee's agency or site, function, records, equipment, and personnel are absorbed by another agency.

§ 178.204 Order of payment precedence.

To facilitate the settlement of the accounts of the deceased employees, money due an employee at the time of the employee's death shall be paid to the person or persons surviving at the date of death, in the following order of precedence, and the payment bars recovery by another person of amounts so paid:

(a) First, to the beneficiary or beneficiaries designated by the employee in a writing received in the employing agency prior to the employee's death;

(b) Second, if there is no designated beneficiary, to the surviving spouse of the employee;

(c) Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation;

(d) Fourth, if none of the above, to the parents of the deceased employee or the survivor of them;

(e) Fifth, if none of the above, to the duly appointed legal representative of the estate of the deceased employee; and

(f) Sixth, if none of the above, to the person or persons entitled under the laws of the domicile of the employee at the time of his or her death.

§ 178.205 Procedures upon death of employee.

(a) *Claim form.* As soon as practicable after the death of an employee, the agency in which the employee was last employed will request, in the order of precedence outlined in § 178.204, the appropriate person or persons to execute Standard Form 1153, Claim for Unpaid Compensation of Deceased Civilian Employee.

(b) *Claims involving minors or incompetents.* If a guardian or committee has been appointed for a minor or incompetent appearing entitled to unpaid compensation, the claim should be supported by a certificate of the court showing the appointment and qualification of the claimant in such capacity. If no guardian or committee has been or will be appointed, the initial claim should be supported by a statement showing:

(1) Claimant's relationship to the minor or incompetent, if any;

(2) The name and address of the person having care and custody of the minor or incompetent;

(3) That any moneys received will be applied to the use and benefit of the minor or incompetent; and

(4) That the appointment of a guardian or committee is not contemplated.

§ 178.206 Return of unnegotiated Government checks.

All unnegotiated United States Government checks drawn to the order of a decedent representing money due as defined in § 178.202, and in the possession of the claimant, should be returned to the employing agency concerned. Claimants should be instructed to return any other United States Government checks drawn to the order of a decedent, such as veterans benefits, social security benefits, or Federal tax refunds, to the agency from which the checks were received, with a request for further instructions from that agency.

§ 178.207 Claims settlement jurisdiction.

(a) *District of Columbia and Government corporations.* Claims for unpaid compensation due deceased employees of the government of the District of Columbia shall be paid by the District of Columbia, and those of Government corporations or mixed ownership Government corporations may be paid by the corporations.

(b) *Office of Personnel Management.* Each agency shall pay undisputed claims for the compensation due a deceased employee. Except as provided in paragraph (a) of this section, disputed claims for money due deceased employees of the Federal Government will be submitted to the Claims Adjudication Unit, Office of General Counsel, in accordance with § 178.102 of subpart A. For example:

(1) When doubt exists as to the amount or validity of the claim;

(2) When doubt exists as to the person(s) properly entitled to payment; or

(3) When the claim involves uncurrent checks. *Uncurrent checks* are unnegotiated and/or undelivered checks for money due the decedent which have not been paid by the end of the fiscal year after the fiscal year in which the checks were issued. The checks, if available, should accompany the claims.

(c) *Payment of claim.* Claims for money due will be paid by the appropriate agency only after settlement by the Claims Adjudication Unit occurs.

§ 178.208 Applicability of general procedures.

When not in conflict with this subpart, the provisions of subpart A of this part relating to procedures applicable to claims generally are also applicable to the settlement of account of deceased civilian officers and employees.

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 760

RIN 0560-AF-30

Dairy Indemnity Payment Program

AGENCY: Farm Service Agency, USDA.
ACTION: Final rule.

SUMMARY: This final rule amends the authority citation for the Dairy Indemnity Payment Program (DIPP) regulations to cover the expenditure of additional funds that were recently appropriated. The DIPP indemnifies dairy farmers and manufacturers for losses suffered with respect to milk and milk products, through no fault of their own.

EFFECTIVE DATE: December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Raellen Erickson, Agricultural Program Specialist, Price Support Division, FSA, USDA, STOP 0512, 1400 Independence Avenue, SW, Washington, DC 20250-0512; telephone (202) 720-7320; e-mail address is RErickso@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Dairy Indemnity Payments, Number 10.053.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because the Farm Service Agency is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12988

This rule has been reviewed pursuant to Executive Order 12988. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of the regulations prevail. The provisions of this rule are not retroactive. Prior to any judicial action in a court of competent jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

The information collections in 7 CFR part 760 will be published in a separate **Federal Register** Notice with request for comments. A regular submission of this information collection package will be forwarded to OMB at the end of the 60-day comment period.

Background

The DIPP was originally authorized by section 331 of the Economic Opportunity Act of 1964. The statutory authority for the program was extended several times. Most recently, funds were appropriated for this program by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Act, 1998 ("the Act"), Pub. L. 105-86, 111 Stat. 2079, which authorizes the program to be carried out until the funds appropriated under the Act are expended. The objective of DIPP is to indemnify dairy farmers and manufacturers of dairy products who, through no fault of their own, suffer income losses with respect to milk or milk products removed from commercial markets because such milk or milk products contain certain harmful residues. In addition, dairy farmers can also be indemnified for income losses with respect to milk required to be removed from commercial markets due to residues of chemicals or toxic substances or

contamination by nuclear radiation or fallout.

The regulations governing the program are set forth at 7 CFR §§ 760.1-760.34. This final rule makes no changes in the provisions of the regulations. Since the only purpose of this final rule is to revise the authority citation pursuant to the Act, it has been determined that no further public rulemaking is required. Therefore, this final rule shall become effective upon the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 760

Dairy products, Indemnity payments, Pesticides and pests.

Accordingly, 7 CFR Part 760 is amended as follows:

PART 760—INDEMNITY PAYMENT PROGRAMS

Subpart—Dairy Indemnity Payment Program

The authority citation for Subpart—Dairy Indemnity Payment Program is revised to read as follows:

Authority: Dairy Indemnity Program, Pub. L. 105-86, 111 Stat. 2079.

Signed in Washington, DC, on December 22, 1997.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 97-34032 Filed 12-30-97; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV97-905-1 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Limiting the Volume of Small Florida Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is finalizing without change the provisions of an amended interim final rule limiting the volume of small red seedless grapefruit entering the fresh market under the Florida citrus marketing order. The marketing order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is administered locally by the Citrus Administrative Committee (committee). The amended interim final rule limited